No. 86-656

Supreme Court, U.S.
FILED
APR 3 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

RONALD W. REAGAN, *et al.*,

Petitioners,

v.

JAMES ABOUREZK, *et al.*,

Respondents.

GEORGE P. SHULTZ, *et al.*,

Petitioners,

v.

CITY OF NEW YORK, *et al.*,

Respondents.

GEORGE P. SHULTZ, *et al.*,

Petitioners,

v.

BRUCE CRONIN, *et al.*,

Respondents.

On Writ of Certiorari To The United States Court Of Appeals For The District of Columbia Circuit

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BRIEF OF AMICUS CURIAE INTERNATIONAL HUMAN RIGHTS LAW GROUP IN SUPPORT OF RESPONDENTS

Of Counsel:

STEVEN M. SCHNEEBAUM
LARRY GARBER

INTERNATIONAL HUMAN
RIGHTS LAW GROUP
733 Fifteenth Street, N.W.
Suite 1000
Washington, D.C. 20005
(202) 639-8016

ELI WHITNEY DEBEVOISE II*
KIMBERLY TILL
SARAH J.C. REYNOLDS

ARNOLD & PORTER
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 872-6700

Counsel for International Human Rights Law Group

**Counsel of Record*

April 3, 1987

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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BRIEF OF AMICUS CURIAE INTERNATIONAL HUMAN RIGHTS LAW GROUP IN SUPPORT OF RESPONDENTS

INTEREST OF AMICUS CURIAE*

The International Human Rights Law Group ("Law Group") is a District of Columbia nonprofit corporation organized to promote the observance of international human rights. The Law Group participates as *amicus curiae* in United States litigation involving international human rights and provides legal assistance to individuals and groups on a *pro bono* basis in cases brought in United States courts and international fora.

The 1975 Final Act of the Conference on Security and Cooperation in Europe (the "Helsinki Accords") contains a significant statement of international human rights norms, including standards concerning the free movement of individuals and the exchange of ideas and information without regard to national borders. The Law Group believes that these provisions of the Helsinki Accords are extremely relevant to the resolution of this case. In particular, the human rights norms enunciated in the Helsinki Accords cannot be ignored in determining the impact of the McGovern Amendment on the interpretation of Section 212(a)(27) and (28) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1182(a)(27) and (28) (1982).

SUMMARY OF ARGUMENT

The McGovern Amendment constitutes a clear expression of Congressional intent that the United States implement the provisions of the Helsinki Accords with respect to the free movement of people, information, and ideas across national borders. Al-

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* Petitioners' and Respondents' written consents to the filing of this brief are on file with the Clerk.

though the McGovern Amendment applies most directly to subsection (28) of Section 212(a) of the Immigration and Nationality Act, the Amendment is also relevant in these cases, which the Petitioners considered under subsection (27). Since the Amendment is expressly designed to achieve greater United States compliance with the Helsinki Accords, the Accords themselves are also relevant to the judicial inquiry here.

In the cases before the Court, the denials of nonimmigrant visas to four aliens invited to meet and exchange opinions with United States citizens appear to violate United States commitments under the Helsinki Accords. The District Court failed to consider the Helsinki Accords in its analysis. The Court of Appeals' remand should therefore be affirmed so that the District Court can consider the Helsinki Accords in its analysis.

ARGUMENT

I. THE McGOVERN AMENDMENT CONSTITUTES A CLEAR EXPRESSION OF CONGRESSIONAL INTENT THAT THE UNITED STATES IMPLEMENT THE PROVISIONS OF THE HELSINKI ACCORDS WITH RESPECT TO THE FREE MOVEMENT OF PEOPLE, INFORMATION, AND IDEAS

The United States and thirty-four other nations, including the Soviet Union, signed an historic declaration of human rights norms in Helsinki, Finland on August 1, 1975. The declaration formed part of the Final Act of the Conference on Security and Cooperation in Europe (hereinafter the "Final Act" or the

"Helsinki Accords").[1] Among other things, the participating States undertook to promote the free flow of people, information, and ideas on an international basis. Each of the participating States resolved to "implement the provisions of the Final Act of the Conference in order to give full effect to its results."[2]

In 1977, Congress passed the McGovern Amendment[3] for the explicit purposes of "achieving greater United States compliance with the provisions of the Final Act of the Conference on Security and Cooperation in Europe" and "encouraging other signatory countries to comply with those provisions." The Amendment modified existing statutory provisions that were incompatible with the provisions of the Final Act concerning freedom of movement and the exchange of information and ideas across national borders.[4] Specifically, Section 212(a)(28) ("subsection (28)") of the Immigration and Nationality Act (the "INA"),[5] 8 U.S.C. § 1182(a)(28) (1982), accorded un-

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[1] Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, Dept. of State Pub. No. 8826 (Gen. For. Pol. Ser. 298), *reprinted in* 14 I.L.M. 1292 (1975) (hereinafter "Final Act" or "Helsinki Accords").

[2] *Id.* at 1324.

[3] Foreign Relations Authorization Act, Pub. L. 95-105, § 112, 91 Stat. 848 (1977) (codified as amended at 22 U.S.C. § 2691(a) (1982)).

[4] Congress also created the Commission on Security and Cooperation in Europe (the "Helsinki Commission") to monitor compliance with the Accords. 22 U.S.C. § 3001 *et seq.* (1982). One of the Commission's particular mandates is to encourage a "greater interchange of people and ideas between East and West." 22 U.S.C. § 3002.

[5] The Immigration and Nationality Act is also known as the McCarran-Walter Act.

fettered discretion to the Executive to deny nonimmigrant visas solely by reason of membership in, or affiliation with, a proscribed organization. The McGovern Amendment significantly limited this unfettered discretion, which is clearly incompatible with United States commitments under the Helsinki Accords, by providing that

> the Secretary of State should, within 30 days of receiving an application for a nonimmigrant visa by any alien who is excludible from the United States by reason of membership in or affiliation with a proscribed organization but who is otherwise admissible to the United States, recommend that the Attorney General grant the approval necessary for the issuance of a visa to such alien, unless the Secretary determines that the admission of such alien would be contrary to the security interests of the United States.[6]

The McGovern Amendment constitutes a clear statement of Congressional intent that the INA, and subsection (28) in particular, be administered in accordance with the human rights norms of the Final Act regarding the free flow of people, information, and ideas among nations.

II. PROPER RESOLUTION OF THIS CASE REQUIRES CONSIDERATION OF THE HELSINKI ACCORDS

Respondents argue that when interpreting 8 U.S.C. § 1182(a)(27) ("subsection (27)"), the statutory provision which Petitioners relied upon to deny nonim-

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[6] *Id.*

migrant visas in these cases, subsection (28) and the McGovern Amendment cannot be ignored.[7] The Law Group agrees. In addition, the Helsinki Accords cannot be ignored.

Subsection (27) makes persons who seek to enter the United States to engage in "activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States" ineligible for a nonimmigrant visa.[8] Subsection (28) makes persons affiliated with certain proscribed organizations ineligible for such visas, absent a waiver by the Attorney General.[9] The McGovern Amendment provides that the Secretary of State should recommend that the Attorney General grant the necessary waiver in order to achieve greater compliance with the Helsinki Accords.

The Court of Appeals noted that "[a] familiar canon of statutory construction cautions the court to avoid interpreting a statute in such a way as to make part of it meaningless."[10] Here, if subsection (27) is considered in isolation, the Executive will retain precisely the discretion that Congress limited in the McGovern Amendment, thereby rendering subsection (28) meaningless.[11]

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[7] For a detailed discussion of this issue, see Respondents' Brief at 33-40.

[8] 8 U.S.C. § 1182(a)(27) (1982).

[9] 8 U.S.C. § 1182(a)(28) (1982).

[10] *Abourezk v. Reagan*, 785 F.2d 1043, 1054 (D.C. Cir. 1986) (citing 2A N. Singer, *Sutherland Statutory Construction* § 46.06 (4th ed. 1984)); *see also Am. Textile Mfrs.' Inst. v. Donovan*, 452 U.S. 490 (1981); *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979).

[11] Even though the McGovern Amendment does not expressly

A related principle of construction requires that each part of a statute be read as a part of the whole in order to produce a harmonious construction.[12] Subsection (27) and subsection (28), as limited by the McGovern Amendment, must, therefore, be read together to give each a meaning that is both separate from, and consistent with, the other. These meanings must, of course, also be consistent with the Congressional intent underlying each section. As the Court of Appeals noted, the proper construction of the subsections in question will "preserve the significance of both sections, *and the congressional intent that guided their adoption.*"[13]

There can hardly be a plainer expression of intent than that contained in the McGovern Amendment. The amendment was adopted explicitly "[f]or purposes of achieving greater United States compliance with the provisions of the Final Act."[14] This expression of intent was enacted into law. It forms part of the statute itself.[15] Any construction of the two sub-

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amend subsection (28), the Amendment is relevant to the construction of subsections (27) and (28), since it is without question a statute *in pari materia*. *See* 2A N. Singer, *Sutherland Statutory Construction* § 51.01 (4th ed. 1984). Such statutes should be construed together.

[12] *See* 2A N. Singer, *Sutherland Statutory Construction*, § 46.05 (4th ed. 1984).

[13] 785 F.2d 1043 at 1057 (emphasis supplied) (citing *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 633 (1973).

[14] 22 U.S.C. § 2691(a) (1982).

[15] There is thus no need for recourse to legislative history to determine Congressional intent with respect to the McGovern Amendment. An analysis of the plain language of the Amendment is all that is required. Moreover, any attempt by the

sections that does not serve to bring the United States into greater compliance with the Helsinki Accords in the fashion envisioned by the Amendment robs a portion of the statute of its meaning and contravenes Congressional intent. It is thus necessary and proper for both the Executive and the courts, when construing subsection (27), to consider the Helsinki Accords and to determine whether the proposed interpretation will achieve greater U.S. compliance.[16]

On the record presented in these cases, it does not appear that the Executive gave any consideration to the particular relevance of the Final Act when it interpreted subsection (27). Furthermore, the District Court failed to examine the relationship of subsection (27) to subsection (28), as limited by the McGovern Amendment, and thus failed to consider the relevance of the Helsinki Accords.

III. THE VISA DENIALS IN THESE CASES APPEAR TO VIOLATE UNITED STATES COMMITMENTS UNDER THE HELSINKI ACCORDS TO PROMOTE THE FREE FLOW OF PEOPLE, INFORMATION, AND IDEAS ACROSS NATIONAL BORDERS, AND THIS ISSUE SHOULD BE EXAMINED ON REMAND

The Helsinki Accords establish specific standards for the promotion of the free flow of individuals, in-

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Petitioners to use administrative practice to overcome the express intent of the Amendment should be rejected. *See INS v. Cardoza-Fonseca*, 55 U.S.L.W. 4313, 4322 (U.S. March 9, 1987) (Scalia, J., concurring in the judgment).

[16] *Cf. id.* at 4317-18 (Stevens, J.) (definition of "refugee" under U.S. immigration law must be interpreted and applied consistently with United Nations Protocol Relating to the Status of Refugees, because there was clear Congressional intent to give it such meaning).

formation, and ideas across national borders. The United States appears to have violated these standards by denying visas to Tomas Borge, Nino Pasti, Olga Finlay, and Leonor Rodriguez Lezcano. This Court should affirm the decision of the Court of Appeals to remand so the District Court can consider the challenged visa denials in light of United States commitments under the Helsinki Accords.

The Conference on Security and Cooperation in Europe opened on July 3, 1973. Originally, it was to focus only on political and security issues. Under pressure from the Western countries, including the United States, the Conference expanded its agenda to include human rights issues.[17]

The commitments of the participating States pertaining to human rights are contained in the first and third sections (so-called "baskets") of the Final Act. Principle VII of Basket I establishes the general parameters of the signatories' commitments in the field of human rights. Basket III sets forth the more specific objectives in this area.

Principle VII of Basket I provides that the signatories "will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief."[18] It also specifically enjoins the participating States to act in conformity with the United Nations Charter, the Universal Declaration of Human Rights, the International Covenants on Hu-

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[17] *Fulfilling Our Promises: The United States and the Helsinki Final Act (A Status Report),* Commission on Security and Cooperation in Europe 256 (1979) (hereinafter *"Status Report of the Helsinki Commission"*).

[18] Final Act, *supra* note 1, at 1295.

man Rights, and other international declarations and agreements in the field of human rights and fundamental freedoms.[19]

Basket III reflects the specific agreement of the participating States to facilitate the movement of individuals, information, and ideas across national borders. The first section of Basket III promotes the free movement of individuals through commitments to reduce restrictions on personal and professional travel. The second section, which focuses on the free movement of information without regard to national borders, emphasizes in part the importance of exchanges of oral information at lectures, conferences, and international meetings. The third and fourth sections address the free movement of ideas by encouraging increased cultural and educational contacts and exchanges.

With respect to the freer flow of people, the participating States undertook to facilitate wider travel by individuals for personal or professional reasons by agreeing to "simplify and to administer flexibly the procedures for exit and entry."[20] In these cases, the United States has neither simplified nor flexibly administered its immigration procedures. Instead, it has engaged in a creative interpretation of its immigration laws to maintain the rigid procedures in effect prior to the Conference.

With regard to the freer and wider dissemination of information of all kinds, the signatories agreed to

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[19] *Id.*

[20] *Id.* at 1314.

> facilitate the dissemination of oral information through the encouragement of lectures and lecture tours by personalities and specialists from the other participating States, as well as exchanges of opinions at round table meetings, seminars, symposia, summer schools, congresses and other bilateral and multilateral meetings.[21]

Each of the aliens denied a visa in this case can argue that the United States has failed to fulfill this specific commitment. Each has specialized knowledge to impart, and each was invited to participate in the types of functions enumerated above.

Tomas Borge was invited to engage in a five-day speaking tour and also to meet with members of Congress, journalists, and university professors regarding his perspective on Central American affairs. As Interior Minister of Nicaragua, Mr. Borge certainly has expertise on that subject.

Nino Pasti, a former member of the Italian Senate, a former general in the Italian armed forces, and the current president of the Struggle for Peace organization, is a specialist on defense issues. He was invited to share his views with two organizations which are interested in United States nuclear weapons deployment policies.

Finally, Olga Finlay and Leonor Rodriguez Lezcano are two Cuban women who have special expertise on the status of women in Cuba. They were invited to speak at several universities and to address women's and religious organizations across the country. By de-

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[21] *Id.* at 1316.

nying visas to these individuals, the United States apparently violated its commitment under the Final Act to promote the types of exchanges described in section two of Basket III.

With respect to the expansion of contacts, the participating States agreed that

> [b]y way of further developing contacts among governmental institutions and non-governmental organizations and associations, including women's organizations, the participating States will facilitate the convening of meetings as well as travel by delegations, groups and individuals.[22]

Olga Finlay and Leonor Lezcano applied for nonimmigrant visas in order to address women's organizations. Representatives of both governmental and non-governmental organizations sought to develop contacts with Borge. The United States thwarted those aims and apparently failed to fulfill its Helsinki Accords commitments by denying visas to these individuals.[23]

Few issues concerning U.S. compliance with the Final Act have received more criticism from a broader range of sources at home and abroad than U.S. visa

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[22] *Id.* at 1315.

[23] Any failure by the United States to observe its commitments is doubly embarrassing since the United States has on numerous occasions urged other signatory countries to comply with the human rights provisions of the Final Act. See Carliner, *United States Compliance With the Helsinki Final Act: The Treatment of Aliens*, 13 Vand. J. Transnat'l L. 397, 408 (1980).

policies.[24] As Senator Mathias has pointed out, visa denials of the type involved here are

> very embarrassing to a nation which thrives on free speech and the marketplace of ideas.
>
> Barring individuals and groups from the United States solely because we do not like what they say or what they write represents a danger to our own values, a shroud of censorship on our own people and an unnecessary violation—singular as it is—of the letter and spirit of our obligations under the Helsinki Final Act.[25]

The Helsinki Accords provisions with respect to the free flow of individuals, information, and ideas across national borders are limited, as are all international norms governing a nation's immigration policies, by legitimate national security concerns. Petitioners have raised no such concerns in this case. Even if such concerns were raised, they should pose no obstacle to the fundamental requirement that the courts take the Helsinki Accords into account in applying subsection (27) and subsection (28), as limited by the McGovern Amendment, to individual cases.

CONCLUSION

For the foregoing reasons, the Law Group requests this Court to affirm the Court of Appeals' remand

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[24] *Status Report of the Helsinki Commission*, *supra* note 17, at 257-58.

[25] *Implementation of the Helsinki Accords: Hearing Before the Commission on Security and Cooperation in Europe*, 99th Cong., 2d Sess. at 59 (1986) (statement of Sen. Charles McC. Mathias, Jr.).

so that the District Court can consider the Helsinki Accords in its analysis.

Respectfully submitted,

ELI WHITNEY DEBEVOISE II*
KIMBERLY TILL
SARAH J.C. REYNOLDS

ARNOLD & PORTER
1200 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 872-6700

Counsel for International Human Rights Law Group

**Counsel of Record*

Of Counsel:

STEVEN M. SCHNEEBAUM
LARRY GARBER

INTERNATIONAL HUMAN RIGHTS LAW GROUP

733 Fifteenth Street, N.W.
Suite 1000
Washington, D.C. 20005
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